

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE MAY 17, 2011

SENATE BILL

No. 686

Introduced by Senator Padilla
(Principal coauthor: Senator Strickland)
(Coauthor: Senator La Malfa)
(Coauthor: Assembly Member Fletcher)

February 18, 2011

An act to ~~add and repeal Section 6377.1 of the Revenue and Taxation~~
amend Section 26011.8 of the Public Resources Code, relating to
taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 686, as amended, Padilla. Sales and use taxes: exemption:
~~biotechnology~~ *advanced* manufacturing.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from the taxes imposed by that law. *Existing law authorizes, until January 1, 2012, the California Alternative Energy and Advanced Transportation Financing Authority to evaluate project applications and to approve projects, as defined by the California Alternative Energy and Advanced Transportation Financing Authority Act, for financial assistance in the form of an exclusion from a "sale" or "purchase" subject to Sales and Use Tax Law.*

This bill would ~~exempt from those taxes, on and after January 1, 2012, and before January 1, 2020, the gross receipts from the sale of,~~

~~and the storage, use, or other consumption of, tangible personal property purchased by a qualified person for use primarily in the biotechnology manufacturing process. The bill additionally would require the Legislative Analyst's Office to report to the Joint Legislative Budget Committee on the effectiveness of this tax exemption~~ *additionally include advanced manufacturing, as defined, as a project eligible for the above exclusion from the Sales and Use Tax Law.*

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 26011.8 of the Public Resources Code is*
- 2 *amended to read:*
- 3 26011.8. (a) The purpose of this section is to promote the
- 4 creation of California-based manufacturing, California-based jobs,
- 5 *the rapid transfer of new technologies to the manufacturing*
- 6 *industry,* the reduction of greenhouse gases, or reductions in air
- 7 and water pollution or energy consumption. In furtherance of this
- 8 purpose, the authority may approve a project for financial
- 9 assistance in the form of the sales and use tax exclusion established
- 10 in Section 6010.8 of the Revenue and Taxation Code.
- 11 (b) (1) For purposes of this section, "project" means a project
- 12 as defined in paragraph (2) of subdivision (g) of Section 26003.

(2) For purposes of this section, “alternative sources” also includes advanced electric distributive generation technology as defined in Section 379.8 of the Public Utilities Code or energy storage technologies and their component materials.

(3) *For the purposes of this section, “advanced manufacturing” means any of the following:*

(A) *The implementation of process improvements, increasing quality controls, and installing advanced technologies, as defined by the authority, and other intelligent production systems, as defined by the authority.*

(B) *The use of a highly skilled and highly compensated workforce.*

(C) *The rapid transfer and adoption of newly researched and developed manufacturing technologies into the manufacturing process.*

(c) The authority shall publish notice of the availability of project applications and deadlines for submission of project applications to the authority.

(d) The authority shall evaluate project applications based upon all of the following criteria:

(1) The extent to which the project develops manufacturing facilities, or purchases equipment for manufacturing facilities, located in California.

(2) The extent to which the anticipated benefit to the state from the project equals or exceeds the projected benefit to the participating party from the sales and use tax exclusion.

(3) The extent to which the project will create new, permanent jobs in California.

(4) *The extent to which the project utilizes advanced manufacturing.*

~~(4)~~

(5) To the extent feasible, the extent to which the project, or the product produced by the project, results in a reduction of greenhouse gases, a reduction in air or water pollution, an increase in energy efficiency, or a reduction in energy consumption, beyond what is required by any federal or state law or regulation.

~~(5)~~

(6) The extent of unemployment in the area in which the project is proposed to be located.

~~(6)~~

(7) Any other factors the authority deems appropriate in accordance with this section.

(e) At a duly noticed public hearing, the authority shall approve, by resolution, project applications for financial assistance.

(f) Notwithstanding subdivision (j), and without regard to the actual date of any transaction between a participating party and the authority, any project as defined in subdivision (g) of Section 26003 approved by the authority by resolution for the sales and use tax exclusion pursuant to Section 6010.8 of the Revenue and Taxation Code prior to the effective date of this section, shall not be subject to this section.

(g) The Legislative Analyst's Office shall report to the Joint Legislative Budget Committee on the effectiveness of this program, on or before January 1, 2019, by evaluating factors, including, but not limited to, the following:

(1) The number of jobs created by the program in California.

(2) The number of businesses that have remained in California or relocated to California as a result of this program.

(3) The amount of state and local revenue and economic activity generated by the program.

(4) *The types of advanced manufacturing utilized.*

~~(4)~~

(5) The amount of reduction in greenhouse gases, air pollution, water pollution, or energy consumption.

(h) Once the exclusions granted pursuant to Section 6010.8 of the Revenue and Taxation Code for projects approved by the authority pursuant to this section exceed one hundred million dollars (\$100,000,000) annually, the authority shall provide a 20-day notice to the Legislature prior to making additional approvals pursuant to this section.

(i) The authority shall make every effort to expedite the operation of this section, and shall adopt regulations for purposes of implementing the section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(j) This section shall remain in effect only until January 1, 2021, and as of that date is repealed. The sale or purchase of tangible personal property of a project approved prior to January 1, 2021, shall continue to be excluded from sales and use taxes pursuant to Section 6010.8 of the Revenue and Taxation Code for the period of time set forth in the authority's resolution approving the project pursuant to this section.

~~SECTION 1.— Section 6377.1 is added to the Revenue and Taxation Code, to read:~~

~~6377.1. (a) On and after January 1, 2012, there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of tangible personal property purchased for use in biotechnology manufacturing by a qualified person to be used primarily in any stage of manufacturing of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, has altered property to its completed form, including packaging, if required.~~

~~(b) For purposes of this section:~~

~~(1) "Biotechnology manufacturing" means manufacturing in the lines of business described in Codes 325411, 325412, 325413, 325414, 334510, 33911, and 541711 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2007 edition, including medicinal and botanical manufacturing, pharmaceutical preparation manufacturing, in-vitro diagnostic substance manufacturing, biological product manufacturing, and marketing research.~~

~~(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.~~

~~(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).~~

~~(4) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and~~

1 introduced into the manufacturing activity of the qualified person
2 and ending at the point at which the manufacturing activity of the
3 qualified person has altered tangible personal property to its
4 completed form, including packaging, if required. Raw materials
5 shall be considered to have been introduced into the process when
6 the raw materials are stored on the same premises where the
7 qualified person's manufacturing activity is conducted. Raw
8 materials that are stored on premises other than where the qualified
9 person's manufacturing activity is conducted, shall not be
10 considered to have been introduced into the manufacturing process.

11 (5) "Qualified person" means a person who is engaged in
12 biotechnology manufacturing.

13 (6) (A) "Tangible personal property," as used in this section,
14 includes, but is not limited to, all of the following:

15 (i) Machinery and equipment, including component parts and
16 contrivances such as belts, shafts, moving parts, and operating
17 structures.

18 (ii) All equipment or devices used or required to operate, control,
19 regulate, or maintain the machinery, including, without limitation,
20 computers, data processing equipment, and computer software;
21 together with all repair and replacement parts with a useful life of
22 one or more years, whether purchased separately or in conjunction
23 with a complete machine and regardless of whether the machine
24 or component parts are assembled by the taxpayer or another party.

25 (iii) Property used in pollution control that meets standards
26 established by this state or any local or regional governmental
27 agency within this state.

28 (iv) Fuels used or consumed in the manufacturing process.

29 (B) "Tangible personal property" shall not include any of the
30 following:

31 (i) Consumables with a normal useful life of less than one year,
32 except as provided in clause (iv) of subparagraph (A).

33 (ii) Furniture, inventory, and equipment used in the extraction
34 process, or equipment used to store finished products that have
35 completed the manufacturing process.

36 (iii) Tangible personal property used primarily in administration,
37 general management, or marketing.

38 (c) An exemption shall not be allowed under this section unless
39 the purchaser furnishes the retailer with an exemption certificate,
40 completed in accordance with any instructions or regulations as

1 the board may prescribe, and the retailer subsequently furnishes
2 the board with a copy of the exemption certificate. The exemption
3 certificate shall contain the sales price of the machinery or
4 equipment, the sale of, or the storage, use, or other consumption
5 of which is exempt pursuant to subdivision (a):

6 (d) ~~Notwithstanding subdivision (a), the exemption provided~~
7 ~~by this section shall not apply to any sale or use of property which,~~
8 ~~within one year from the date of purchase, is removed from~~
9 ~~California, converted from an exempt use under subdivision (a)~~
10 ~~to some other use not qualifying for the exemption, or used in a~~
11 ~~manner not qualifying for the exemption.~~

12 (e) ~~If a purchaser certifies in writing to the seller that the~~
13 ~~property purchased without payment of the tax will be used in a~~
14 ~~manner entitling the seller to regard the gross receipts from the~~
15 ~~sale as exempt from the sales tax, and within one year from the~~
16 ~~date of purchase, the purchaser removes that property outside~~
17 ~~California, converts that property for use in a manner not qualifying~~
18 ~~for the exemption, or uses that property in a manner not qualifying~~
19 ~~for the exemption, the purchaser shall be liable for payment of~~
20 ~~sales tax, with applicable interest, as if the purchaser were a retailer~~
21 ~~making a retail sale of the property at the time the property is so~~
22 ~~removed, converted, or used, and the sales price of the property~~
23 ~~to the purchaser shall be deemed the gross receipts from that retail~~
24 ~~sale.~~

25 (f) ~~This section shall remain in effect only through and including~~
26 ~~December 31, 2019, and is repealed on January 1, 2020.~~

27 SEC. 2. (a) ~~On or before January 1, 2020, the Legislative~~
28 ~~Analyst's Office shall report to the Joint Legislative Budget~~
29 ~~Committee on the effectiveness of the tax exemption established~~
30 ~~in Section 6377.1 of the Revenue and Taxation Code by evaluating~~
31 ~~various factors, including, but not limited to, all of the following:~~

32 (1) ~~The amount of tax revenue lost to the state as a result of the~~
33 ~~tax exemption.~~

34 (2) ~~The number of employers claiming the tax exemption and~~
35 ~~the nature of the claims, such as the size of the employer, the~~
36 ~~location of the employer, and the primary biotechnology emphasis~~
37 ~~of the employer.~~

38 (3) ~~The activities and products for which the tax exemption was~~
39 ~~claimed.~~

1 ~~(4) The number of jobs created in California as a result of the~~
2 ~~tax exemption.~~

3 ~~(5) The number of businesses that have remained in California~~
4 ~~or relocated to California as a result of the tax exemption.~~

5 ~~(6) The amount of state and local revenue and economic activity~~
6 ~~generated by the tax exemption.~~

7 ~~(b) The Legislative Analyst's Office shall evaluate the tax~~
8 ~~exemption, as described in subdivision (a), with a focus on~~
9 ~~outcomes and the fiscal and employment impacts of this exemption~~
10 ~~for the State of California.~~

11 ~~SEC. 3.~~

12 ~~SEC. 2.~~ Notwithstanding Section 2230 of the Revenue and
13 Taxation Code, no appropriation is made by this act and the state
14 shall not reimburse any county or city for any sales and use tax
15 revenues lost by it under this act.

16 ~~SEC. 4.~~

17 ~~SEC. 3.~~ This act provides for a tax levy within the meaning of
18 Article IV of the Constitution and shall go into immediate effect.